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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JUAN FLORES-MENDEZ, an individual; and  
TRACY GREENAMYER, an individual, on  
behalf of themselves and on behalf of classes of  
similarly situated individuals,

Plaintiffs,

v.

ZOOSK, INC., a Delaware corporation,  
Defendant.

Case No. 3:20-cv-4929-WHA

**DEFENDANT ZOOSK, INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFFS' FOURTH  
AMENDED CLASS ACTION  
COMPLAINT**

Judge: The Honorable William Alsup

DEFENDANT ZOOSK, INC.'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' FOURTH AMENDED CLASS  
ACTION COMPLAINT  
3:20-cv-4929-WHA

1 Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant Zoosk, Inc.  
2 (“Zoosk”) hereby files its answer to Plaintiffs’ Fourth Amended Class Action Complaint, dated  
3 April 29, 2022 (the “Complaint”), as set forth below. Any allegations in the Complaint not  
4 expressly admitted herein are denied. Moreover, Zoosk denies any factual allegations contained in  
5 the headings of the Complaint unless specifically admitted herein.

6 1. To the extent the allegation in paragraph 1 merely purports to describe a page on  
7 Zoosk’s website and an April 16, 2014 Form S-1 filed by Zoosk, Zoosk states that the website and  
8 Form S-1 are the best source of their full content and context and, to the extent such allegations do  
9 not accurately represent their full content and context, Zoosk denies the allegation in paragraph 1.

10 2. Zoosk denies the allegations in the first sentence of paragraph 2. Zoosk states that  
11 it lacks information or knowledge sufficient to form a belief as to the truth of the allegation in the  
12 second sentence of paragraph 2 and, therefore, denies the same.

13 3. Zoosk admits that “Members” (those who have registered for Zoosk services by  
14 creating an account) have the option of paying for a subscription service and admit that Flores-  
15 Mendez purchased a subscription service before the data breach was announced, and Zoosk denies  
16 the remaining allegations in paragraph 3.

17 4. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
18 the truth of the allegation in paragraph 4 and, therefore, denies the same.

19 5. To the extent the allegation in paragraph 5 merely purports to describe an article in  
20 WIRED, Zoosk states that the article is the best source of its full content and context and, to the  
21 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
22 allegation in paragraph 5. To the extent that a further response to the allegation in paragraph 5 is  
23 required, Zoosk states that it lacks information or knowledge sufficient to form a belief as to the  
24 truth of the allegation in paragraph 5 and, therefore, denies the same.

25 6. To the extent the allegations in paragraph 6 merely purport to describe Zoosk’s June  
26 3, 2020 notice to certain Zoosk Members, Zoosk states that the notice is the best source of its full

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1 content and context and, to the extent such allegations do not accurately represent its full content  
2 and context, Zoosk denies the allegation in paragraph 6.

3 7. Zoosk admits that on June 3, 2020, it provided a notice to certain Zoosk Members.  
4 To the extent the allegation in paragraph 7 merely purports to describe Zoosk's June 3, 2020 notice  
5 to said Zoosk Members, Zoosk states that the notice is the best source of its full content and context  
6 and, to the extent such allegations do not accurately represent its full content and context, Zoosk  
7 denies the allegation in paragraph 7.

8 8. Zoosk denies the allegations in paragraph 8.

9 9. Zoosk denies the allegation in the first sentence of paragraph 9 that the notice Zoosk  
10 provided to certain Zoosk Members entitled "Notice of Data Security Event" was sent on May 28,  
11 2020. Zoosk admits the allegation in the first sentence of paragraph 9 that it sent certain Zoosk  
12 Members a notice entitled "Notice of Data Security Event" and that such notice included a phone  
13 number for Member inquiries. The remaining allegations in paragraph 9 set forth legal conclusions,  
14 to which no response is required. To the extent the allegations in the second and third sentences of  
15 paragraph 9 merely purport to quote Cal. Civil Code § 1798.82, Zoosk states that the statute is the  
16 best source of its full content and context and, to the extent such allegations do not accurately  
17 represent its full content and context, Zoosk denies the allegation in paragraph 9. To the extent that  
18 a further response to the allegations in paragraph 9 is required, Zoosk denies the same.

19 10. The allegations in paragraph 10 set forth legal conclusions, to which no response is  
20 required. To the extent the allegations in paragraph 10 merely purport to describe or quote the  
21 CCPA, Zoosk states that the statute is the best source of its full content and context and, to the  
22 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
23 allegation in paragraph 10. To the extent that a further response to the allegations in paragraph 10  
24 is required, Zoosk denies the same.

25 11. The allegation in paragraph 11 sets forth legal conclusions, to which no response is  
26 required. To the extent the allegation in paragraph 11 merely purports to describe or quote the

1 CCPA, Zoosk states that the statute is the best source of its full content and context and, to the  
2 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
3 allegation in paragraph 11. To the extent that a further response to the allegations in paragraph 11  
4 is required, Zoosk denies the same.

5 12. To the extent the allegation in the first sentence of paragraph 12 merely purports to  
6 describe the notice entitled “Notice of Data Security Event” that Zoosk sent to certain Zoosk  
7 Members, Zoosk states that such notice is the best source of its full content and context and, to the  
8 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
9 allegation in the first sentence of paragraph 12. To the extent a further response to the allegation  
10 in the first sentence of paragraph 12 is required, Zoosk denies the same. Zoosk states that it lacks  
11 information or knowledge sufficient to form a belief as to the truth of the allegation in the second  
12 sentence of paragraph 12 and, therefore, denies the same.

13 13. The allegation in paragraph 13 sets forth legal conclusions, to which no response is  
14 required. To the extent that a further response to the allegation in paragraph 13 is required, Zoosk  
15 denies the same.

16 14. The allegation in the first sentence of paragraph 14 sets forth legal conclusions, to  
17 which no response is required. To the extent that a further response to the allegation in the first  
18 sentence of paragraph 14 is required, Zoosk denies the same. To the extent the allegations in the  
19 second sentence of paragraph 14 merely purports to describe Zoosk’s notice entitled “Notice of  
20 Data Security Event” that Zoosk sent to certain Zoosk Members, Zoosk states that such notice is  
21 the best source of its full content and context and, to the extent such allegations do not accurately  
22 represent its full content and context, Zoosk denies the allegations in the second sentence of  
23 paragraph 14. The allegation in the third sentence of paragraph 14 sets forth legal conclusions, to  
24 which no response is required. To the extent that a further response to the allegation in the third  
25 sentence of paragraph 14 is required, Zoosk denies the same. Zoosk states that it lacks information  
26

1 or knowledge sufficient to form a belief as to the truth of the allegation in the fourth sentence of  
2 paragraph 14 and, therefore, denies the same.

3 15. The allegation in paragraph 15 sets forth legal conclusions, to which no response is  
4 required. To the extent that a further response to the allegation in paragraph 15 is required, Zoosk  
5 denies the same.

6 16. To the extent the allegations in paragraph 16 merely purports to describe Zoosk's  
7 notice entitled "Notice of Data Security Event" that Zoosk sent to certain Zoosk Members, Zoosk  
8 states that such notice is the best source of its full content and context and, to the extent such  
9 allegations do not accurately represent its full content and context, Zoosk denies the allegations in  
10 paragraph 16. The allegations in paragraph 16 set forth legal conclusions, to which no response is  
11 required. To the extent that a further response to the allegations in paragraph 16 is required, Zoosk  
12 states that it lacks information or knowledge sufficient to form a belief as to the truth of the  
13 allegation in paragraph 16 and, therefore, denies the same.

14 17. Zoosk denies the allegation in paragraph 17.

15 18. The allegations in paragraph 18 sets forth legal conclusions, to which no response  
16 is required. To the extent that a further response to the allegations in paragraph 18 is required,  
17 Zoosk denies the same and denies that it is appropriate for Plaintiffs to bring claims on behalf of  
18 the purported classes.

19 19. The allegations in paragraph 19 set forth legal conclusions, to which no response is  
20 required. To the extent that a further response to the allegations in paragraph 19 is required, Zoosk  
21 denies the same and denies that it is appropriate for Plaintiffs to bring claims on behalf of the  
22 purported classes.

### 23 **JURISDICTION AND VENUE**

24 20. The allegations in paragraph 20 set forth legal conclusions, to which no response is  
25 required. To the extent that a further response to the allegations in paragraph 20 is required, Zoosk  
26 denies that Plaintiffs have any actionable claim and denies any remaining allegations in paragraph

1 20.

2 21. The allegations in the first sentence of paragraph 21 set forth legal conclusions, to  
3 which no response is required. Zoosk admits that it has conducted business in this District, but  
4 denies that it maintains its principal place of business in this District. To the extent that a further  
5 response to the allegations in paragraph 21 is required, Zoosk denies the same.

6 22. The allegations in paragraph 22 set forth legal conclusions, to which no response is  
7 required. To the extent that a further response to the allegations in paragraph 22 is required, Zoosk  
8 states that it lacks information or knowledge sufficient to form a belief as to the truth of the  
9 allegation in the second sentence of paragraph 22 regarding the residences of members of the  
10 putative classes and, therefore, denies the same. Zoosk denies that Plaintiffs have any actionable  
11 claim and denies any remaining allegations in paragraph 22.

12 **INTRADISTRICT ASSIGNMENT**

13 23. The allegations in paragraph 23 set forth legal conclusions, to which no response is  
14 required. To the extent that a further response to the allegations in paragraph 23 is required, Zoosk  
15 admits that it has conducted business in the counties served by this Division, has marketed and  
16 advertised its business in the counties served by this Division, and has collected Member  
17 information in this District. Zoosk denies the remaining allegations in paragraph 23.

18 **PARTIES**

19 24. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
20 the truth of the allegations in the first, third, and fifth sentences of paragraph 24 and, therefore,  
21 denies the same. Zoosk denies the allegations in the second sentence of paragraph 24. Zoosk  
22 denies the allegation in the fourth sentence of paragraph 24 that Plaintiff Flores-Mendez received  
23 a notice in the mail on May 28, 2020 from Zoosk. To the extent the allegations in the fourth  
24 sentence of paragraph 24 merely purports to describe Zoosk's notice entitled "Notice of Data  
25 Security Event" that Zoosk sent to Plaintiff Flores-Mendez on June 6, 2020, Zoosk states that such  
26 notice is the best source of its full content and context and, to the extent such allegations do not

1 accurately represent its full content and context, Zoosk denies the allegations in the second sentence  
2 of paragraph 24.

3 25. Zoosk denies the allegations in paragraph 25.

4 26. Zoosk denies the allegations in paragraph 26.

5 27. On March 31, 2022, the Court dismissed Plaintiff Collins's claims with prejudice.  
6 See Transcript of Proceedings (ECF No. 170) at 5:4-6. As a result, Zoosk has no obligation to  
7 respond to this paragraph.

8 28. On March 31, 2022, the Court dismissed Plaintiff Collins's claims with prejudice.  
9 See Transcript of Proceedings (ECF No. 170) at 5:4-6. As a result, Zoosk has no obligation to  
10 respond to this paragraph.

11 29. On March 31, 2022, the Court dismissed Plaintiff Collins's claims with prejudice.  
12 See Transcript of Proceedings (ECF No. 170) at 5:4-6. As a result, Zoosk has no obligation to  
13 respond to this paragraph.

14 30. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
15 the truth of the allegations in the first, fourth, and fifth sentences of paragraph 30 and, therefore,  
16 denies the same. Zoosk denies the allegations in the second, third, sixth, and seventh sentences of  
17 paragraph 30.

18 31. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
19 the truth of the allegations in paragraph 31 and, therefore, denies the same.

20 32. Zoosk denies that it maintains a headquarters and principal place of business in San  
21 Francisco, California. Zoosk denies that it ever charges any amount to "users" (those who access  
22 Zoosk's services without registering for the services by creating an account). Zoosk admits that  
23 "subscribers" (those who purchase a subscription) send messages and chat with other subscribers.  
24 Zoosk admits the remaining allegations in paragraph 32.

25 33. To the extent the allegations in paragraph 33 merely purports to describe data from  
26 Sensor Tower, Zoosk states that the data is the best source of its full content and context and, to the

1 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
2 allegations in paragraph 33. To the extent that a further response to the allegation in paragraph 33  
3 is required, Zoosk denies the same.

#### 4 **FACTUAL BACKGROUND**

##### 5 **Defendant's Relevant Privacy Policies**

6 34. Zoosk admits that users are required to provide an email address in order to register  
7 for Zoosk services by creating a Zoosk account and thereby become a Member. Zoosk denies any  
8 remaining allegations in paragraph 34.

9 35. To the extent the allegations in paragraph 35 merely purports to describe and quote  
10 Zoosk's Privacy Policy that appeared on Zoosk's website as of April 29, 2022, Zoosk states that  
11 such Privacy Policy is the best source of its full content and context and, to the extent such  
12 allegations do not accurately represent its full content and context, Zoosk denies the allegations in  
13 paragraph 35.

14 36. To the extent the allegations in paragraph 36 merely purports to describe and quote  
15 Zoosk's Privacy Policy that appeared on Zoosk's website as of April 29, 2022, Zoosk states that  
16 such Privacy Policy is the best source of its full content and context and, to the extent such  
17 allegations do not accurately represent its full content and context, Zoosk denies the allegations in  
18 paragraph 36.

19 37. To the extent the allegations in paragraph 37 merely purports to describe and quote  
20 Zoosk's Privacy Policy referenced in footnote 9, Zoosk states that such Privacy Policy is the best  
21 source of its full content and context and, to the extent such allegations do not accurately represent  
22 its full content and context, Zoosk denies the allegations in paragraph 37. To the extent that a  
23 further response to the allegations in paragraph 37 is required, Zoosk denies the same.

24 38. To the extent the allegations in paragraph 38 merely purports to describe Zoosk's  
25 Privacy Policy referenced in footnote 10, Zoosk states that such Privacy Policy is the best source  
26



1 of its full content and context and, to the extent such allegations do not accurately represent its full  
2 content and context, Zoosk denies the allegations in paragraph 38.

3 39. To the extent the allegations in paragraph 39 merely purports to describe and quote  
4 Zoosk's Privacy Policy referenced in footnote 11, Zoosk states that such Privacy Policy is the best  
5 source of its full content and context and, to the extent such allegations do not accurately represent  
6 its full content and context, Zoosk denies the allegations in paragraph 39.

7 40. To the extent the allegations in paragraph 40 merely purports to describe and quote  
8 Zoosk's Privacy Policy referenced in footnote 12, Zoosk states that such Privacy Policy is the best  
9 source of its full content and context and, to the extent such allegations do not accurately represent  
10 its full content and context, Zoosk denies the allegations in paragraph 40.

11 41. To the extent the allegations in paragraph 41 merely purports to describe and quote  
12 Zoosk's Privacy Policy referenced in footnote 13, Zoosk states that such Privacy Policy is the best  
13 source of its full content and context and, to the extent such allegations do not accurately represent  
14 its full content and context, Zoosk denies the allegations in paragraph 41.

15 42. To the extent the allegations in paragraph 42 merely purports to describe and quote  
16 Zoosk's Privacy Policy referenced in footnote 14, Zoosk states that such Privacy Policy is the best  
17 source of its full content and context and, to the extent such allegations do not accurately represent  
18 its full content and context, Zoosk denies the allegations in paragraph 42.

19 43. The allegations in paragraph 43 set forth legal conclusions, to which no response is  
20 required. To the extent the allegations in paragraph 43 merely purports to describe and quote  
21 Zoosk's Privacy Policy referenced in footnotes 15 and 16, Zoosk states that such Privacy Policy is  
22 the best source of its full content and context and, to the extent such allegations do not accurately  
23 represent its full content and context, Zoosk denies the allegations in paragraph 43. To the extent  
24 that a further response to the allegations in paragraph 43 is required, Zoosk denies the same.

25 44. The allegation in paragraph 44 sets forth legal conclusions, to which no response is  
26 required. To the extent the allegations in paragraph 44 merely purports to describe and quote

1 Zoosk's Privacy Policy, Zoosk states that the Privacy Policy is the best source of its full content  
2 and context and, to the extent such allegations do not accurately represent its full content and  
3 context, Zoosk denies the allegations in paragraph 44. To the extent that a further response to the  
4 allegation in paragraph 44 is required, Zoosk denies the same.

5 45. To the extent the allegations in footnote 17 and paragraph 45 merely purport to  
6 describe and quote Zoosk's Privacy Policy at various points in time, Zoosk states that such versions  
7 of the Privacy Policy are the best sources of their full content and context and, to the extent such  
8 allegations do not accurately represent their full content and context, Zoosk denies the allegations  
9 in paragraph 45. Zoosk denies any remaining allegations in paragraph 45.

10 46. To the extent the allegations in footnote 18 and paragraph 46 merely purport to  
11 describe and quote the versions of Zoosk's Privacy Policy referenced in footnote 18, Zoosk states  
12 that such versions of the Privacy Policy are the best sources of their full content and context and,  
13 to the extent such allegations do not accurately represent their full content and context, Zoosk  
14 denies the allegations in paragraph 46. Zoosk further states that it lacks information or knowledge  
15 sufficient to form a belief as to the truth of the allegations in paragraph 26 because the term "Class  
16 Period" is nowhere defined in the Complaint and, therefore, denies the same.

17 47. The allegations in paragraph 47 set forth legal conclusions, to which no response is  
18 required. To the extent the allegations in paragraph 47 merely purport to describe Zoosk's Privacy  
19 Policy, Zoosk states that the Privacy Policy is the best source of its full content and context and, to  
20 the extent such allegations do not accurately represent its full content and context, Zoosk denies  
21 the allegations in paragraph 47. To the extent that a further response to the allegations in paragraph  
22 47 is required, Zoosk denies the same.

23 48. Zoosk denies the allegation in paragraph 48.

24 49. The allegations in paragraph 49 set forth legal conclusions, to which no response is  
25 required. To the extent a further response to the allegations in paragraph 49 is required, Zoosk  
26 denies the same.

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DEFENDANT ZOOSK, INC.'S ANSWER  
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**Zoosk Uses PII to Maximize Its Profits and For Marketing**

50. To the extent the allegations in paragraph 50 merely purports to describe and quote Zoosk's Privacy Policy, Zoosk states that the Privacy Policy is the best source of its full content and context and, to the extent such allegations do not accurately represent its full content and context, Zoosk denies the allegations in paragraph 50.

**Zoosk Failed to Take Reasonable Steps to Protect User Data**

51. The allegation in paragraph 51 sets forth legal conclusions, to which no response is required. To the extent that a further response to the allegation in paragraph 51 is required, Zoosk denies the same.

52. The allegations in paragraph 52 set forth legal conclusions, to which no response is required. To the extent that a further response to the allegations in paragraph 52 is required, Zoosk denies the same.

53. The allegations in the first and second sentence of paragraph 53 set forth legal conclusions, to which no response is required. To the extent that a further response to the allegations in paragraph 53 is required, Zoosk denies the same. Zoosk denies the allegation in the third sentence of paragraph 53. To the extent that a further response to the allegations in paragraph 53 is required, Zoosk denies the same and denies that it is appropriate for Plaintiffs to bring claims on behalf of the purported classes.

54. Zoosk admits that Zoosk was valued at \$258 million when it was acquired by Spark. The remaining allegations in paragraph 54 set forth legal conclusions, to which no response is required. To the extent that a further response to the remaining allegations in paragraph 54 is required, Zoosk denies the same.

**Zoosk's Failure to Take Reasonable Steps to Protect User Data Resulted in a Massive Data Breach**

55. The allegations in paragraph 55 set forth legal conclusions, to which no response is required. To the extent that a further response to the allegations in paragraph 55 is required, Zoosk

1 denies the same.

2       56. The allegation in the first sentence of paragraph 56 sets forth legal conclusions, to  
3 which no response is required. To the extent a further response to the allegation in the first sentence  
4 of paragraph 56 is required, Zoosk denies the same. As to the remaining allegations of paragraph  
5 56, Zoosk admits that its business operates exclusively online; denies that it has or ever had any  
6 legal obligation to protect against third-party criminal attacks on any information Plaintiffs may  
7 have provided to it; states, in the alternative, that to the extent any such obligation exists or ever  
8 existed, Zoosk has and at all times had measures in place sufficient to meet (and in fact did meet)  
9 any such obligation; and otherwise denies said allegations.

10       57. Zoosk denies the allegation in paragraph 57.

11       58. Zoosk admits that it became aware on May 11, 2020 of unlawful access to certain  
12 information provided to Zoosk by certain Zoosk Members in connection with becoming or being a  
13 Zoosk Member. Zoosk states that it lacks information or knowledge sufficient to form a belief as  
14 to the truth of the remaining allegations in paragraph 58 and, therefore, denies the same.

15 **Zoosk Did Not Notify Affected Consumers Within a Reasonable Time**

16       59. The allegations in paragraph 59 set forth legal conclusions, to which no response is  
17 required. To the extent a further response to the allegations in paragraph 59 is required, Zoosk  
18 denies the same.

19       60. Zoosk denies the allegations in paragraph 60.

20 **Annual Monetary Losses from Identity Theft are in the Billions of Dollars in Value of**  
21 **Personally Identifiable Information**

22       61. The allegations in paragraph 61 set forth legal conclusions, to which no response is  
23 required. To the extent a further response to the allegations in paragraph 61 is required, Zoosk  
24 denies the same. Zoosk further denies that it is appropriate for Plaintiffs to bring claims on behalf  
25 of the purported classes.

26       62. Zoosk states that it lacks information or knowledge sufficient to form a belief as to

1 the truth of the allegation in paragraph 62 and, therefore, denies the same.

2 63. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
3 the truth of the allegation in paragraph 63 and, therefore, denies the same.

4 64. Zoosk denies the allegation in the first sentence of paragraph 64. Zoosk states that  
5 it lacks information or knowledge sufficient to form a belief as to the truth of the remaining  
6 allegations in paragraph 64 and, therefore, denies the same.

7 65. Zoosk states that it lacks information or knowledge sufficient to form a belief as to  
8 the truth of the allegation in paragraph 65 and, therefore, denies the same.

9 66. To the extent the allegations in paragraph 66 merely purport to describe a GAO  
10 report, Zoosk states that the report is the best source of its full content and context and, to the extent  
11 such allegations do not accurately represent its full content and context, Zoosk denies the  
12 allegations in paragraph 66. To the extent a further response to the allegations in paragraph 66 is  
13 required, Zoosk states that it lacks information or knowledge sufficient to form a belief as to the  
14 truth of the remaining allegations in paragraph 66 and, therefore, denies the same.

15 67. The allegations in paragraph 67 sets forth legal conclusions, to which no response  
16 is required. To the extent a further response to the allegations in paragraph 67 is required, Zoosk  
17 denies the same. Zoosk further denies that it is appropriate for Plaintiffs to bring claims on behalf  
18 of the purported classes.

19 68. Zoosk admits that it has not offered credit monitoring services to any of the Zoosk  
20 Members to whom Zoosk sent the notice entitled “Notice of Data Security Event.” Zoosk denies  
21 the remaining allegations in the first sentence of paragraph 68. To the extent the allegation in the  
22 second sentence of paragraph 68 merely purports to describe Zoosk’s notice entitled “Notice of  
23 Data Security Event” that Zoosk sent to certain Zoosk users, Zoosk states that the Notice of Data  
24 Security Event is the best source of its full content and context and, to the extent such allegations  
25 do not accurately represent its full content and context, Zoosk denies the allegation in the second  
26 sentence of paragraph 68.

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1 response is required. To the extent that a further response to the allegations in paragraph 74 is  
2 required, Zoosk denies the same.

3 75. To the extent the allegation in the second sentence of paragraph 75 merely purports  
4 to describe Zoosk's notice entitled "Notice of Data Security Event" that Zoosk sent to certain Zoosk  
5 users, Zoosk states that such notice is the best source of its full content and context and, to the  
6 extent such allegations do not accurately represent its full content and context, Zoosk denies the  
7 allegation in the second sentence of paragraph 75. The remaining allegations in paragraph 75 set  
8 forth legal conclusions, to which no response is required. To the extent that a further response to  
9 the allegations in paragraph 75 is required, Zoosk denies the same.

10 76. The allegations in paragraph 76 set forth legal conclusions, to which no response is  
11 required. To the extent that a further response to the allegations in paragraph 76 is required, Zoosk  
12 denies the same.

13 77. The allegations in paragraph 77 set forth legal conclusions, to which no response is  
14 required. To the extent that a further response to the allegations in paragraph 77 is required, Zoosk  
15 denies the same.

16 78. The allegations in paragraph 78 set forth legal conclusions, to which no response is  
17 required. To the extent that a further response to the allegations in paragraph 78 is required, Zoosk  
18 denies the same.

19 79. The allegations in paragraph 79 set forth legal conclusions, to which no response is  
20 required. To the extent that a further response to the allegations in paragraph 79 is required, Zoosk  
21 denies the same.

22 80. The allegations in paragraph 80 set forth legal conclusions, to which no response is  
23 required. To the extent that a further response to the allegations in paragraph 80 is required, Zoosk  
24 denies the same.

25 81. The allegations in paragraph 81 set forth legal conclusions, to which no response is  
26 required. To the extent that a further response to the allegations in paragraph 81 is required, Zoosk

1 denies the same.

2 82. The allegations in paragraph 82 set forth legal conclusions, to which no response is  
3 required. To the extent that a further response to the allegations in paragraph 82 is required, Zoosk  
4 denies the same.

5 83. The allegations in paragraph 83 set forth legal conclusions, to which no response is  
6 required. To the extent that a further response to the allegations in paragraph 83 is required, Zoosk  
7 denies the same.

8 84. The allegations in paragraph 84 set forth legal conclusions, to which no response is  
9 required. To the extent that a further response to the allegations in paragraph 84 is required, Zoosk  
10 denies the same.

11 85. The allegations in paragraph 85 set forth legal conclusions, to which no response is  
12 required. To the extent that a further response to the allegations in paragraph 85 is required, Zoosk  
13 denies the same.

14 86. The allegations in paragraph 86 set forth legal conclusions, to which no response is  
15 required. To the extent that a further response to the allegations in paragraph 86 is required, Zoosk  
16 denies the same.

17 **FIRST CAUSE OF ACTION**  
18 **NEGLIGENCE**  
19 **(By Plaintiffs and the Classes)**

20 87. Zoosk repeats and incorporates by reference each and every response to paragraphs  
21 1 to 86 above.

22 88. The allegations in paragraph 88 set forth a legal conclusion, to which no response is  
23 required. To the extent that a further response to the allegations in paragraph 88 is required, Zoosk  
24 denies the same.

25 89. The allegations in paragraph 89 set forth a legal conclusion, to which no response is  
26 required. To the extent that a further response to the allegations in paragraph 89 is required, Zoosk  
27 denies the same.

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90. The allegations in paragraph 90 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 90 is required, Zoosk denies the same.

91. The allegations in paragraph 91 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 91 is required, Zoosk denies the same.

92. The allegations in paragraph 92 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 92 is required, Zoosk denies the same.

93. The allegations in paragraph 93 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 93 is required, Zoosk denies the same.

94. Zoosk states that it lacks information or knowledge sufficient to form a belief as to the truth of the allegation in paragraph 94 and, therefore, denies the same.

95. The allegations in paragraph 95 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 95 is required, Zoosk denies the same. To the extent the allegations in paragraph 95 merely purport to describe and quote Section 5 of the FTC Act, Zoosk states that the statute is the best source of its full content and context and, to the extent such allegations do not accurately represent its full content and context, Zoosk denies the allegations in paragraph 95.

96. The allegations in paragraph 96 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 96 is required, Zoosk denies the same.

97. The allegations in paragraph 97 set forth a legal conclusion, to which no response is required. To the extent that a further response to the allegations in paragraph 97 is required, Zoosk denies the same.





**DEMAND FOR JURY TRIAL**

No response is required to Plaintiffs' Demand for Jury Trial. To the extent a response to Plaintiffs' Demand for Jury Trial is required, Zoosk denies that Plaintiffs are entitled to a jury trial.

**AFFIRMATIVE DEFENSES****First Defense**

Plaintiffs lack standing under Article III of the United States Constitution.

**Second Defense**

The damages suffered by Plaintiffs, if any, were caused by the acts of others for whose conduct Zoosk was not responsible, including but potentially not limited to the criminals who perpetrated the cyberattack, and for those actions Zoosk cannot be found liable.

**Third Defense**

Plaintiffs' claims are barred because Zoosk's Terms of Use, of which Plaintiffs received notice and to which Plaintiffs assented, contains a limitation of liability provision excluding relief for any and all of the damages and injuries claimed by Plaintiffs.

**Fourth Defense**

Plaintiffs' claims are barred both by the merger clause in the Terms of Use, of which Plaintiffs received notice and to which Plaintiffs assented, and by the warranty disclaimer in the Terms of Use insofar as Plaintiffs' claims are based on any Zoosk representation, warranty, or promise not expressly contained in the Terms of Use.

**Fifth Defense**

Plaintiffs' negligence claim is barred because Plaintiffs did not suffer any damages or injuries that were caused by an act or omission of Zoosk.

**Sixth Defense**

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1 Plaintiffs' negligence claim is barred, in whole or in part, by a lack of actual or proximate  
2 cause.

3 **Seventh Defense**

4 Plaintiffs' negligence claim is barred because Zoosk does not owe a common-law or  
5 statutory duty of care to Plaintiffs to protect against third-party criminal attack any information  
6 Plaintiffs may have provided to Zoosk in connection with their becoming or being Zoosk users.

7 **Eighth Defense**

8 Plaintiffs' negligence claim is barred by the economic loss doctrine.

9 **Ninth Defense**

10 Plaintiffs' negligence claim is barred because Plaintiffs' alleged damages, if any, were not  
11 reasonably foreseeable.

12 **Tenth Defense**

13 Plaintiffs have suffered no recoverable damages.

14 **Eleventh Defense**

15 To the extent Plaintiffs have suffered any recoverable damages, such damages are limited  
16 to \$50 per person by the limitation of liability provision in the Terms of Use, of which Plaintiffs  
17 received notice and to which Plaintiffs assented.

18 **Twelfth Defense**

19 Plaintiffs' damages claims are barred to the extent they have failed to take steps to mitigate  
20 their alleged damages.

21 **Thirteenth Defense**

22 Plaintiffs' damages claims are barred to the extent any steps they may have taken to mitigate  
23 their alleged damages were unreasonable.

24 **Fourteenth Defense**

25 Plaintiffs' damages claims are barred to the extent Plaintiffs were contributorily negligent  
26 with respect to any damages they claim to have incurred.

27  
28  
21  
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**Fifteenth Defense**

Plaintiffs have suffered no legally cognizable injuries that are actionable in negligence under applicable law.

**Sixteenth Defense**

Plaintiffs lack standing to bring a claim under California's Unfair Competition Law ("UCL") because Plaintiffs did not suffer injury in fact or lose money or property as a result of the alleged UCL violation.

**Seventeenth Defense**

Plaintiffs' claim under the UCL is barred because Plaintiffs did not actually rely on any purported misrepresentations or omissions by Zoosk.

**Eighteenth Defense**

Plaintiffs' claim under the UCL is barred in whole or in part because Zoosk's alleged business acts or practices are not unfair or fraudulent within the meaning of Cal. Bus. & Prof. Code § 17200 or otherwise.

**Nineteenth Defense**

Plaintiffs' claim under the UCL is barred because Zoosk's alleged conduct does not violate any public policy tethered to any specific constitutional, statutory or regulatory provisions.

**Twentieth Defense**

Plaintiffs' claim under the UCL is barred because Zoosk's alleged conduct was not immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

**Twenty-First Defense**

Plaintiffs' claim under the UCL is barred because the utility of Zoosk's alleged conduct outweighs the gravity of any alleged harm.

**Twenty-Second Defense**

Plaintiffs' claim under the UCL is barred because Zoosk's alleged conduct was not likely to mislead.

**Twenty-Third Defense**

Plaintiffs are not entitled to restitution under the UCL because Zoosk did not unfairly obtain profits representing monies given by Plaintiffs to Zoosk or benefits in which Plaintiffs have an ownership interest.

**Twenty-Fourth Defense**

Plaintiffs are not entitled to an injunction under the UCL because the allegedly unlawful Zoosk conduct occurred in the past and Zoosk is not currently, nor in the future will be, engaging in the alleged unlawful activity.

**Twenty-Fifth Defense**

Plaintiffs lack standing for injunctive relief because they are not exposed to a risk of future harm that is sufficiently imminent and substantial.

**Twenty-Sixth Defense**

Plaintiffs' claims may not properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

**Twenty-Seventh Defense**

Plaintiffs' claims may not properly be maintained as a class action because by means of the Zoosk Terms of Use, of which Plaintiffs had notice and to which Plaintiffs assented, each Plaintiff agreed that any and all claims brought by him or her against Zoosk must be brought in his or her individual capacity and not as a plaintiff in a class action. By such agreement each Plaintiff waived any right he or she might otherwise have had to bring this action as a class action.

**Twenty-Eighth Defense**

Plaintiffs' claims are barred for failure to comply with the pre-litigation dispute resolution requirement of the Terms of Use, of which Plaintiffs had notice and to which Plaintiffs assented.

**Twenty-Ninth Defense**

Plaintiffs' claims may not properly be tried to a jury because the Terms of Use, of

1 which Plaintiffs had notice and to which Plaintiffs assented, waived trial by jury and because  
2 Plaintiffs' claims are, in any event, not triable to a jury insofar as Plaintiffs seek only equitable  
3 and/or declaratory relief and/or bring any claim under the UCL.

4 **Thirtieth Defense**

5 Plaintiffs' claims should not be litigated in this venue because the Terms of Use, of  
6 which Plaintiffs had notice and to which Plaintiffs assented, require resolution of any claim or  
7 dispute Plaintiffs may have against Zoosk to be resolved in a federal or state court located in Santa  
8 Clara County, California or as described in the Terms of Use's arbitration provision.

9 **Thirty-First Defense**

10 Plaintiffs' claims are subject to arbitration because the Terms of Use, of which  
11 Plaintiffs had notice and to which Plaintiffs assented, require resolution of any claim, dispute, or  
12 controversy arising out of or in connection with or relating to the Terms of Use by arbitration in  
13 Santa Clara County, California.

14 **Reservation of Rights**

15 Zoosk reserve the right to amend this Answer or to assert other defenses as this action  
16 proceeds. In particular, but without limitation, in the event this action is certified as a class action,  
17 Zoosk reserves the right to amend this Answer to assert defenses that may be available under the  
18 law applicable to the claims of any class member. Based on all of the foregoing as well as other  
19 grounds, Zoosk denies that Plaintiffs are entitled to any relief whatsoever.



1 Dated: May 13, 2022

Respectfully Submitted,

2 /s/ Douglas H. Meal

3 Douglas H. Meal (*admitted pro hac vice*)

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